

§ 28.25

allegations; an estimate of the amount of money or the value of property, services, or other benefits requested or demanded in violation of § 28.10; any exculpatory or mitigating circumstances that may relate to the claims or statements; and a statement that there is a reasonable prospect of collecting an appropriate amount of penalties and assessments.

[73 FR 76831, Dec. 17, 2008]

§ 28.25 Complaint.

(a) *General.* Upon obtaining approval from the Department of Justice, the General Counsel or designee may issue a complaint to the respondent. The complaint shall be mailed, by registered or certified mail, or shall be delivered through such other means by which delivery may be confirmed. The complaint shall also be filed simultaneously with the Office of Administrative Law Judges in accordance with § 26.30(a) of this chapter.

(b) *Complaint.* The complaint shall include:

(1) The allegations of liability against the respondent, including the statutory basis for liability, the claims or statements at issue, and the reasons why liability arises from those claims or statements;

(2) A statement that the required approval to issue the complaint was received from the Department of Justice as required by 24 CFR 28.20;

(3) The amount of penalties and assessments for which the respondent may be held liable;

(4) A statement that the respondent may request a hearing by submitting a written response to the complaint;

(5) The addresses to which a response must be sent in accordance with § 26.38 of this title; and

(6) A statement that failure to submit an answer within 30 days of receipt of the complaint may result in the imposition of the maximum amount of penalties and assessments sought without right of appeal.

(c) *Parts 26 and 28.* A copy of this part 28 and part 26, subpart B of this chapter, shall be included with the complaint.

(d) *Obligation to preserve documents.* Upon receipt of the complaint, the respondent is required to preserve and

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maintain all documents and data, including electronically stored data, within their possession or control that may relate to the allegations in the complaint. The Department shall also preserve such documents or data upon the issuance of the complaint.

[73 FR 76832, Dec. 17, 2008]

§ 28.30 Response.

(a) The respondent may file a written response to the complaint, in accordance with § 26.30 of this title, within 30 days of service of the complaint. The response shall be deemed to be a request for a hearing. The response must include the admission or denial of each allegation of liability made in the complaint; any defense on which the respondent intends to rely; any reasons why the penalties and assessments should be less than the amount set forth in the complaint; and the name, address, and telephone number of the person who will act as the respondent's representative, if any.

(b) *Failure to respond.* If no response is submitted, HUD may file a motion for default judgment in accordance with § 26.41 of this chapter.

[73 FR 76832, Dec. 17, 2008]

§ 28.35 Statute of limitations.

The statute of limitations for commencing hearings under this part shall be tolled:

(a) If the hearing is commenced in accordance with 31 U.S.C. 3803(d)(2)(B) within 6 years after the date on which the claim or statement is made; or

(b) If the parties agree to such tolling.

[73 FR 76832, Dec. 17, 2008]

§ 28.40 Hearings.

(a) *General.* Hearings under this part shall be conducted in accordance with the procedures in part 26, subpart B, of this chapter, governing actions in accordance with the Administrative Procedure Act.

(b) *Factors to consider in determining amount of penalties and assessments.* In determining an appropriate amount of civil penalties and assessments, the ALJ and, upon appeal, the Secretary or designee, shall consider and state in his